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## LAW CHANGES WON'T CURTAIL DAMAGES SUITS

Whether a scar too large, a diagnosis too late, or surgery gone wrong, very often the patient's response is to sue, reports Clara Pirani

LAWYERS warn the number of malpractice claims against doctors could continue to rise despite changes to civil injuries laws over the past three years.

A review of lawsuits in Australia between 1995 and 2004 found the number of legal claims against doctors from 12 speciality groups increased an average 20 per cent.

According to the report, released by the Medical Indemnity Industry Association of Australia, the increase was in part due to **tort law reform** which reduced the time patients had to sue doctors, sparking a rush of claims between 2000 and 2002.

However the report suggests the slight drop in cases over the past year could be short-lived.

"The various state tort reforms may have begun to reduce claim notifications, although part of this fall may simply represent a (possibly temporary) slowing down of incidents converting to claims while claimants and their advisers come to grips with their new legal environment," the report states.

The number of claims rose from an average of 44 claims per 1000 doctors between 1995 and 2000, to 56 claims per 1000 doctors in 2000/01. The national frequency has stayed between 50 and 55 since then.

Paul Nisselle, a senior adviser at the Medical Defence Association of Victoria, says Australians are simply becoming becoming more litigious.

"We seem to be in a society now where if you are angry, you sue. We've become a name, blame, claim, shame society."

Dr Nisselle says, however, that many claimants, even those who win their cases, receive little satisfaction from the legal system. "Money is not, for example, going to grow the leg back. That's why a lot of people come out the other end of litigation dissatisfied with the process, because their true injury has not been healed."

Nisselle argues that in most cases rapport between medical staff and aggrieved patients will do more to heal rifts than litigation.

He says patients and their families need a 'genuine statement of regret' from medical staff. "It should say we acknowledge how distressing this is for you, this is what we are trying to do to fix this for you and finally, this is what we've learnt from what happened to you to minimise the chance of this happening to someone else. That is very healing for people."

However Neurological Society of Australasia president Myron Rogers says many patients have unrealistic expectations that no amount of communication can resolve.

"Claims don't always mean that there has been devastating injuries by a bad doctor. I'd say the vast majority of claims are from outcomes that the patient was warned may occur, but the patient is not accepting of that and feels that someone has done something wrong," says Dr Rogers.

"If you tell someone there's a one-in-a-thousand risk, they don't think it will happen to them. And it can often be something as simple as 'I don't like the scar that I've got, it's bigger than I thought it would be'."

While lawsuits against most specialty groups increased in the past decade, claims against neurosurgeons dropped 21 per cent.

Rogers says an increased focus on risk management, rather than changes to medical practice, prompted the decline.

"It's not that surgical practice per se has changed, because we're doing the same operations today that we did five years ago. But from the compliance perspective there's been a big increase in the paper work that we are doing.

"It's really more about making sure, to some extent, that the patient has got all the information so they can't turn around and say 'you didn't tell me about this one-in-a-thousand risk'."

He says, however, that some specialties will always attract a higher number of malpractice claims than others.

"One of things peculiar to neurosurgery is that because of the organs that we operate on, or next to -- the brain and the spinal cord -- if there's a problem it usually means that the patient is going to survive but be incapacitated, and therefore they are suing to try to get compensation so they can be better looked after."

Paul Nisselle says obstetricians, for example, will always be the target of a large number of claims.

According to the MIIAA, claims against obstetricians increased 41 per cent between 1995 and 2004.

"Obstetrics are the biggest-ticket items," Nisselle says. "When a child has a very severe disability their needs are so great. Often when the child reaches 16 or 17 the parents realise they are not going to be around forever to look after their child, and they realise they haven't got the money to leave behind to look after their child."

"So you'll get some parents saying they mean the doctor no harm, however the financial needs of the child are so great," Nisselle says.

Claims don't always involve high-risk procedures or extraordinarily large sums of money. Lawsuits against non-procedural GPs and procedural GPs (who have skills in anaesthetics and/or obstetrics and minor operations) increased 42 and 52 per cent respectively between 1995 and 2004.

"Probably the biggest growth area in claims against general practitioners is delayed diagnosis," Nisselle says. "It's always difficult to know at what point should the doctor have at least considered a diagnosis."

Victorian chair of the Royal Australian College of GPs Leanne Rowe says fear of litigation is rife among GPs. "It creates a great fear and pressure in practice and it sometimes causes GPs to practise very defensively. We believe this is affecting their participation in the workforce which is very negative, given we have a workforce shortage," Rowe says.

Rogers believes graduates have begun avoiding specialties involving high-risk procedures. "In our latest intake we had about six places to fill Australia-wide and I think we had about 12 applicants. By comparison they had over 300 applicants for about 20 jobs in ophthalmology."